



Virginia
Regulatory
Town Hall

**Periodic Review and Retention of
Existing Regulations
Agency Background Document**

Agency Name:	Agriculture and Consumer Services (Board of)
VAC Chapter Number:	2 VAC 5-480
Regulation Title:	Regulation Governing the Oxygenation of Gasoline
Action Title:	Review
Date:	February 4, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The regulation is for the purpose of complying in this Commonwealth with any oxygenation requirements specified by the Federal Clean Air Act or any other federal environmental requirement pertaining to motor fuels. The 1990 Amendments to the Federal Clean Air Act require states with carbon monoxide nonattainment areas with design values of 9.5 parts per million (ppm) or more, to implement an oxygenated gasoline program in all such designated areas. This oxygen content requirement applies during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency (EPA) has established this control period, which is a specified four months out of twelve;

in Virginia this control period will begin on November 1 of one year and continue through the end of February of the following year. The regulation: (1) designates carbon monoxide nonattainment areas; (2) designates the control areas and the control period; (3) specifies a minimum oxygenate content in gasoline during the control period; (4) requires records be kept of the type of oxygenate; (5) requires gasoline pump labeling; (6) specifies methods of sampling, testing, and oxygen content calculations; and (7) specifies means of compliance and methods of enforcement.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

This regulation is federally mandated in §211 (m) of the Clean Air Act. The 1990 amendments to the Federal Clean Air Act required states with carbon monoxide nonattainment areas with carbon monoxide levels of 9.5 ppm or more to implement an oxygenated gasoline program in all such nonattainment areas. Following the re-designation of the specified nonattainment area (Washington Metropolitan Statistic Area) by EPA, this regulation was made a conditional requirement, based on the continuation of carbon monoxide levels below 9.5 ppm in the specified nonattainment area. The regulation as currently written meets the absolute minimum requirements of the federal mandate.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The Department published its notice in The Virginia Register of Regulations on November 8, 1999 advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). The Department received no comment from the public regarding this regulation in response to this notice. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The oxygenated fuels regulation is structured as a contingency measure in the State Implementation Plan filed with the EPA. This plan approved by EPA is designed to reduce and maintain carbon monoxide emissions in the northern Virginia portion of the Washington Metropolitan Statistic Area through the year 2007 so that emissions do not exceed the 1990 base year level. By maintaining carbon monoxide emissions at or below this level, the area will continue to meet the national air quality standard for carbon monoxide.

The goal of this regulation is to require the oxygenation of gasoline in a specified area of the state when that oxygenation is federally required. This regulation effectively addresses the federal mandate as a portion of the overall plan to reduce carbon monoxide levels in the specified area without placing unnecessary burdens on the regulated industry.

The regulation is clearly written and easily understood by the individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Due to the nature of the federal mandate, alternative measures do not exist. In the absence of this regulation the State would face sanctions by the federal government. The specified sanctions for not complying with §211 (m) of the Clean Air Act include the loss of federal funding for highway projects and an increase in the ratio of emission reductions to at least 2 to 1 for new or modified sources or emissions units requiring permitting. Both of these measures would adversely impact transportation and economic development within the State.

The oxygenated fuels regulation is structured as a contingency measure in the State Implementation Plan filed with EPA. The plan approved by EPA calls for the implementation of this regulation only if any air quality monitoring station in the specified area records two exceedances of the carbon monoxide air quality standard in any calendar year. The sale of oxygenated fuels in the specified area is not required as long as the area continues to meet carbon monoxide air quality standards. Requiring the sale of oxygenated fuels only if the sale is mandated by the federal government is the least burdensome and least intrusive alternative for meeting this federal mandate and for reducing carbon monoxide levels in the specified area.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

It is the agency's recommendation that this regulation be retained in its current form. The continuation of this regulation will reduce the possibility of sanctions by the federal government for failure to comply with the requirements for air pollution reductions in the specified nonattainment area.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

Unless otherwise discussed in this report, this regulation has no impact upon families.